

KENTUCKY PERSONNEL BOARD
MINUTES OF JULY 8, 2011

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chair Larry B. Gillis on July 8, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Larry B. Gillis, Vice Chair
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Wayne "Doug" Sapp, Member
Susan Gardner, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 10, 2011**

The minutes of the last Board meeting had been previously circulated among the members. Vice Chair Gillis asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Ms. Gardner seconded, and the motion carried 4-0. [Vice Chair Gillis does not vote unless noted.] The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that Chair Suzanne Cassidy resigned to accept a position at the Crime Victims Compensation Board. Mr. Sipek read Ms. Cassidy's letter of resignation into the record. Mr. Sipek stated that she was an important member of the Board and she will be missed.

Judge Tommy Chandler has been appointed to the Board to replace Cecil F. Dunn and will serve for the remainder of the term which expires January 1, 2014. Judge Chandler will be sworn in at the next Board meeting.

Mr. Sipek advised that he and Mr. Crocker attended the annual Hearing Officer Training held by the Attorney General on June 24, 2011. Mr. Sipek stated it was an informative event.

At the conclusion of Mr. Sipek's report, Vice Chair Gillis called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington, on behalf of the Personnel Cabinet, came forward to present the Cabinet's report.

Ms. Bevington advised that a press release was issued stating that there are no furlough days for state employees during the 2011-2012 fiscal year.

Ms. Bevington stated that the Governor's Employee Advisory Council (GEAC) held its quarterly meeting. GEAC was interested in the status of the grievance regulation regarding the recommended change.

At the conclusion of the Personnel Cabinet's report, Vice Chair Gillis asked the parties to come forward for oral argument.

5. **ORAL ARGUMENTS**

A. Charles Cofer v. Transportation Cabinet and Matthew Poynter, Stephen Blake and Jackie Miller

Appellee's Motion to File Late Response to Exceptions

With no objection by Counsel for Appellant, Mr. Sapp moved to accept Appellee's Motion to File Late Response to Exceptions. Dr. Stevens seconded and the motion carried 4-0.

Present for oral argument were counsel for Appellant, Hon. Donald Duff, and counsel for Appellee, the Hon. William Fogle. The parties answered questions from the Board.

B. Lemon C. Moore v. Transportation Cabinet

Present for oral argument were counsel for Appellant, Hon. Paul Fauri, and counsel for Appellee, the Hon. Ed Logan. The parties answered questions from the Board.

6. **MOTIONS** (See Above)

7. **REQUEST FOR INVESTIGATION**

A. Request for Investigation of Dept. of Agriculture -- status report
--Hiring of two Assistant Directors – request by Larry Gillis

The Hon. Nicole Liberto, counsel for the Department of Agriculture, was present to answer the Board's questions.

Prior to discussing the status of the request for investigation, Vice Chair Gillis advised the Board that he will recuse himself from participating in any discussion of this matter and will not vote on this issue. Vice Chair Gillis then turned the meeting over to Dr. Stevens.

At the last meeting, the Board requested that Mr. Sipek present a plan on how to proceed with the investigation. Mr. Sipek advised that two discovery requests were ready to go and outlined what relevant documents are needed. Both the Personnel Cabinet and the Department of Agriculture will be given two weeks to gather the requested information and to submit a response to the Board. Upon receipt of the documents, Mr. Sipek stated that he would be ready to interview relevant witnesses, with a final report to the Board.

Mr. Sipek stated that the Board received a letter from Representative Cherry. Mr. Cherry had read the media reports and expressed an interest in the investigation. Specifically, Mr. Cherry was interested in the issues of the Veterans' preference provision and "anti-burrowing," as he was a sponsor of legislation on these issues.

Mr. Sipek stated that he received an e-mail from the Hon. Nicole Liberto advising that both Ms. Danita Fentress-Laird and Ms. Kathryn Willis resigned their Assistant Director positions effective July 7, 2011. Commissioner Farmer immediately reappointed them to Director positions. Further, Ms. Fentress-Laird and Ms. Alisa Edwards will attend two training courses offered by GSC, "Overview of the Merit

System” and “Structured Behavioral Interviewing.” However, Ms. Willis will not be attending training.

Ms. Gardner asked if the Assistant Director positions will be filled. Ms. Liberto stated they would be filled, after following the proper process.

Mr. Hutcheson asked if the Assistant Director positions would be open to Ms. Fentress-Laird and Ms. Willis. Ms. Liberto advised they would not be prohibited from applying. Ms. Liberto stated that she did not know if the positions would be open to the internal mobility register or the competitive register.

Mr. Sapp suggested that with the interest of Representative Cherry that the investigation should be continued and brought to a conclusion. Mr. Sapp’s suggestion was unanimous among the Board members, with the exception of Mr. Gillis who recused.

Dr. Stevens then turned the meeting back to Vice-Chair Gillis.

8. CLOSED SESSION

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Hutcheson seconded. Vice Chair Gillis stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 4-0. (10:45 a.m.)

Dr. Stevens moved to return to open session. Ms. Gardner seconded and the motion carried 4-0. (12:15 p.m.)

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Charles Cofer v. Transportation Cabinet and Matthew Poynter, Stephen Blake and Jackie Miller

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and oral argument and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

B. Lemon C. Moore v. Transportation Cabinet (2009-048)

Dr. Stevens moved to note Appellee's exceptions, Appellant's response and oral argument and to defer this matter to the next meeting of the Board. Mr. Hutcheson seconded and the motion carried 4-0.

C. Garnett Parrish v. Justice and Public Safety Cabinet
Deferred from May And June Meeting

Mr. Sapp moved to note Appellee's exceptions, oral argument and to accept the Final Order Altering and dismissing the appeal, as attached to the minutes. Dr. Stevens seconded and the motion carried 4-0.

D. Sherry Pottin v. Cabinet for Health and Family Services
Deferred from June Meeting

Ms. Gardner moved to note Appellee's exceptions and Appellant's response and to accept the Final Order Altering and sustaining the appeal to the extent that the dismissal is rescinded and modified to a thirty-day suspension, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 4-0.

E. Beverly Reliford v. Cabinet for Health and Family Services
Deferred From April, May and June Meeting

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument and to accept the Final Order sustaining the appeal, as attached to the minutes. Ms. Gardner seconded and the motion carried 3-0, with Mr. Sapp abstaining.

F. Omar Dorantes v. Justice and Public Safety Cabinet/Corrections

Dr. Stevens moved to note Appellant's exceptions, Appellee's response and oral argument and to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 4-0.

G. Gibson Togunde v. Justice and Public Safety Cabinet

Dr. Stevens, noting Appellee's Exceptions were returned as untimely, moved to remand this matter to the hearing officer to determine whether or not the Appellant was sexually harassed and/or discriminated against based upon his age and ethnic origin, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 4-0.

H. Percy Poole, Jr. v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to accept the recommended order, with clerical correction, dismissing the appeal. Mr. Sapp seconded and the motion carried 4-0.

I. Davie Ransdell v. Energy and Environment Cabinet and R. Edward Hamblin

Ms. Gardner moved to accept the recommended order sustaining the appeal. Dr. Stevens seconded and the motion carried 4-0.

J. Rashad Thompson-Rowe v. Cabinet for Health and Family Services

Mr. Sapp moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

10. WITHDRAWALS

Mr. Hutcheson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 4-0.

- A. Casey Adams v. Justice and Public Safety Cabinet
- B. Elizabeth Coleman v. Cabinet for Health and Family Services
- C. Laura Massey v. Personnel Cabinet
- D. Johnny Mounts v. Personnel Cabinet
- E. Mohammad Rahman v. Personnel Cabinet

11. SETTLEMENTS

Mr. Sapp moved to accept settlements "A," "B," and "D" as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Hutcheson seconded and the motion carried 4-0.

- A. Kathy Jennings v. Education and Workforce Development Cabinet
- B. Lori Coleman v. Finance and Administration Cabinet
- D. Bethany Cook v. Justice and Public Safety Cabinet - mediated

Mr. Sapp moved to accept settlement "C" as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Hutcheson seconded and the motion carried 3-0, with Ms. Gardner recusing.

- C. Angela Griffin and Susan Gardner v. Public Protection Cabinet

12. OTHER

A. Annual Increments for Executive Director and General Counsel

Mr. Sipek, Executive Director, recommended that no annual increment be awarded to either himself, or Mr. Crocker, General Counsel, which is consistent with the budget for classified and unclassified employees. Mr. Crocker concurred with Mr. Sipek's recommendation. The Board accepted Mr. Sipek's recommendation and took no further action on the matter.

Vice Chair Gillis asked if there were any other matters to discuss.

There being no further business, Dr. Stevens moved to adjourn. Mr. Hutcheson seconded and the motion carried 4-0. (12:20 p.m.)

Larry B. Gillis, Vice Chair

Dr. David B. Stevens, Member

David F. Hutcheson, Jr., Member

Wayne D. Sapp, Member

Susan Gardner, Member